cf 152

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)**

**M.A. No. 25 /2006** Single Bench

**APPELLANT** : Hari Vallabh Agrawal aged about 35 years, S/o Ramdayal Agrawal, Businessman, R/o Shanti Chowk Purani Basti, Raipur, Tah& Distt. Raipur (C.G.)

**VERSUS**

**RESPONDENTS**

1. Surya Kumar Agrawal aged about 38 years,S/o Bhikham Lal Agrawal
2. Bhikham Lal Agrawal, aged about 55 years, S/o Sukhnandan Lal Agrawal,
3. Smt. Laxmi Bai Agrawal, aged about 50 years, W/o Shri Bhikham Lal Agrawal. All R/o Aminpara, Lili Chowk, Tah&Distt. Raipur, (C.G.)

P.R. No. 60/06
Presented by Shri B.K. Kawati
dated 09.11.06

**MISC. APPEAL UNDER ORDER 43 RULE 1 OF C.P.C.**

Being aggrieved by the

(18)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

M.A.No.25/06

मामला क्रमांक ..... / ..... सन् 200

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**18-1-2006**

Mr. Ratan Pusty, counsel for the appellant.
Mr. Ravindra Agrawal, counsel for the caveator/respondent No.2.
None for respondents No.1 and 3.

Heard on admission and M.(C.)P.No.37/2006.

Appellant filed a suit for specific performance of contract based on an agreement to sell dated 8-8-2004, whereby respondents entered into a contract for sale of the suit land in favour of the appellant and have received Rs.5 Lakhs as advance towards it and also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for grant of interim injunction. The respondents denied the claim and pleaded that the agreement was violated by the appellant, therefore, they cancelled the same and refunded the amount of Rs.5 Lakhs taken by them in advance.

Learned Court below considered the fact that the appellant did not file the original agreement to sell, the suit land has not been handed over to the appellant and the respondents have stated that they have refunded the advance amount, and held that principles of balance of convenience and irreparable loss do not lie in favour of the appellant, therefore, dismissed the application filed by the appellant for temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

In agreement to sell, there is a clause which authorises the seller to cancel and refund the amount to buyer. It is *prima*

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**आदेश पत्रक**

मामला क्रमांक M.A.No.25/06 —2— सन् 200

..... विरुद्ध .....

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*facie* evident that in that clause the amount Rs.7.5 Lakhs has been corrected as Rs.17.5 Lakhs. The suit land is in possession of the respondents, and they, contending that the appellant violated clause 2 of the agreement, have cancelled the agreement and refunded the amount to the appellant.

Taking into consideration the facts and circumstances of the case, I am of the opinion that, learned District Judge has correctly held that the principles of balance of convenience and irreparable loss do not find favour of the appellant and has correctly dismissed the application. The impugned order does not call for any interference, therefore, the appeal is liable to be dismissed and is accordingly dismissed *in limine*. However, taking into consideration the nature of the dispute, the trial Court is directed to expedite trial of the case early preferably within a period of one year from today.

In the light of above order, M.(C.)P.No.37/2006 and I.A.No.123/2006 stand disposed of.

Sd/-
V.K.Shrivastava
Judge